

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

LATWAHN MCELROY,
Plaintiff,
v.
CASTRO, et al.,
Defendants.

) Case No.: 1:23-cv-0559 JLT SKO (PC)
)
) ORDER ADOPTING FINDINGS AND
) RECOMMENDATIONS IN FULL AND DENYING
) PLAINTIFF'S APPLICATION TO PROCEED
) IN FORMA PAUPERIS
)
) (Doc. 11)
)
)
)

Plaintiff seeks to hold the defendants liable for civil rights violations pursuant to 42 U.S.C. § 1983, and he seeks leave to proceed *in forma pauperis* in this action. (Docs. 1, 4.) The magistrate judge found Plaintiff filed seven prior lawsuits that were dismissed as frivolous or for Plaintiff's failure to state a claim upon which relief may be granted. (Doc. 6 at 2.) Therefore, the magistrate judge found Plaintiff is subject to the three strikes bar imposed by 28 U.S.C. § 1915(g). (*Id.*) The magistrate judge also found the allegations in Plaintiff's complaint do not "present a genuine emergency where time is pressing, and the threat is real." (*Id.* at 3.) Thus, the magistrate judge found the allegations do not satisfy the "imminent danger of serious physical injury" exception to Section 1915(g), and recommended Plaintiff's motion to proceed *in forma pauperis* be denied and that he be ordered to pay the \$402 filing fee in full. (*Id.*)

Plaintiff filed objections to the Findings and Recommendations on May 25, 2023. (Doc. 11.)

1 However, Plaintiff does not address the findings of the magistrate judge that he is subject to the three
2 strikes bar, and he does not identify any facts—either in his complaint or the objections—to support a
3 conclusion that he is in imminent danger of serious physical injury. (See *id.* at 1-8.)

4 Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducted a *de novo* review of this case.
5 Having carefully reviewed the matter, including Plaintiff's objections, the Court concludes the Findings
6 and Recommendations are supported by the record and proper analysis. Accordingly, the Court

7 **ORDERS:**

- 8 1. The Findings and Recommendations issued on April 21, 2023 (Doc. 6) are **ADOPTED**
9 in full.
- 10 2. Plaintiff's motion to proceed in forma pauperis (Doc. 4) is **DENIED**.
- 11 3. Plaintiff **SHALL** pay the \$402 filing fee within 30 days of service of this order.
- 12 4. Plaintiff is advised that failure to pay the required filing fee as ordered will result in the
dismissal of this action without prejudice.

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15 IT IS SO ORDERED.

16 Dated: June 19, 2023


17 UNITED STATES DISTRICT JUDGE

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